

IC 12-15-8.5

Chapter 8.5. Liens on Real Property of Medicaid Recipients

Effective 1-1-2003.

IC 12-15-8.5-1

"Medical institution"

Effective 1-1-2003.

Sec. 1. As used in this chapter, "medical institution" means any of the following:

- (1) A hospital.
- (2) A nursing facility.
- (3) An intermediate care facility for the mentally retarded.

As added by P.L.178-2002, SEC.81.

IC 12-15-8.5-2

Lien for Medicaid expenditures

Effective 1-1-2003.

Sec. 2. Subject to section 10 of this chapter, when the office, in accordance with 42 U.S.C. 1396p, determines that a Medicaid recipient who resides in a medical institution cannot reasonably be expected to be discharged from a medical institution and return home, the office may obtain a lien on the Medicaid recipient's real property for the cost of all Medicaid expenditures made on behalf of the recipient.

As added by P.L.178-2002, SEC.81.

IC 12-15-8.5-3

Limitations on lien

Effective 1-1-2003.

Sec. 3. The office may not obtain a lien under this chapter if any of the following persons lawfully reside in the home of the Medicaid recipient who resides in the medical institution:

- (1) The Medicaid recipient's spouse.
- (2) The Medicaid recipient's child who is:
 - (A) less than twenty-one (21) years of age; or
 - (B) disabled as defined by the federal Supplemental Security Income program.
- (3) The Medicaid recipient's sibling who has an ownership interest in the home and who has lived in the home continuously beginning at least twelve (12) months before the recipient was admitted to the medical institution.
- (4) The Medicaid recipient's parent.
- (5) An individual, other than a paid caregiver, who:
 - (A) was continuously residing in the recipient's home for a period of at least two (2) years immediately prior to the date of the recipient's admission to the nursing facility; and
 - (B) establishes to the satisfaction of the office that the person provided care to the recipient enabling the recipient to reside in the recipient's home rather than in a medical institution.

As added by P.L.178-2002, SEC.81.

IC 12-15-8.5-4

Notice required before lien obtained

Effective 1-1-2003.

Sec. 4. Before obtaining a lien on a Medicaid recipient's interest in real property under this chapter, the office shall notify in writing the Medicaid recipient and the Medicaid recipient's authorized representative, if applicable, of the following:

- (1) The office's determination that the Medicaid recipient cannot reasonably be expected to be discharged from the medical institution.
- (2) The office's intent to impose a lien on the Medicaid recipient's home.
- (3) The Medicaid recipient's right to a hearing under IC 12-15-28 upon the Medicaid recipient's request regarding whether the requirements for the imposition of a lien are satisfied. A lien may not be filed for at least thirty (30) days after the notice is given and until the hearing process is completed if a hearing is requested.

As added by P.L.178-2002, SEC.81.

IC 12-15-8.5-5

Notice required to obtain lien; filing and distribution of notice

Effective 1-1-2003.

Sec. 5. (a) The office shall obtain a lien under this chapter by filing a notice of lien with the recorder of the county in which the real property subject to the lien is located. The notice shall be filed prior to the recipient's death and shall include the following:

- (1) The name and place of residence of the individual against whose property the lien is asserted.
 - (2) A legal description of the real property subject to the lien.
- (b) Upon the office's request, the county auditor or assessor of a county shall furnish the office with the legal description of any property in the county registered to the recipient.
- (c) The office shall file one (1) copy of the notice of lien with the county office of family and children in the county in which the real property is located. The county office of family and children shall retain a copy of the notice with the county office's records.
- (d) The office shall provide one (1) copy of the notice of lien to the recipient or the Medicaid recipient's authorized representative, if applicable, whose real property is affected.

As added by P.L.178-2002, SEC.81.

IC 12-15-8.5-6

Effect of notice of lien; duration of lien

Effective 1-1-2003.

Sec. 6. (a) Beginning on the date on which a notice of lien is recorded in the office of the county recorder under section 5 of this chapter, the notice of lien:

- (1) constitutes due notice of a lien against the Medicaid recipient's real property for any amount then recoverable and any amount that becomes recoverable under this article; and

- (2) gives a specific lien in favor of the office on the Medicaid recipient's interest in the real property.
- (b) The lien continues from the date of filing the lien until the lien:
 - (1) is satisfied;
 - (2) is released; or
 - (3) expires.

As added by P.L.178-2002, SEC.81.

IC 12-15-8.5-7

Lien foreclosure; automatic expiration of lien

Effective 1-1-2003.

Sec. 7. The office may bring proceedings in foreclosure on a lien arising under this chapter:

- (1) during the lifetime of the Medicaid recipient if the Medicaid recipient or a person acting on behalf of the Medicaid recipient sells the property; or
- (2) upon the death of the Medicaid recipient.

The lien automatically expires unless the office commences a foreclosure action not later than nine (9) months after the Medicaid recipient's death.

As added by P.L.178-2002, SEC.81.

IC 12-15-8.5-8

Limitations on enforcement of lien

Effective 1-1-2003.

Sec. 8. (a) The office may not enforce a lien under this chapter if the Medicaid recipient is survived by any of the following:

- (1) The recipient's spouse.
- (2) The recipient's child who is:
 - (A) less than twenty-one (21) years of age; or
 - (B) disabled as defined by the federal Supplemental Security Income program.
- (3) The recipient's parent.

(b) The office may not enforce a lien under this chapter as long as any of the following individuals reside in the home:

- (1) The recipient's child of any age if the child:
 - (A) resided in the home for at least twenty-four (24) months before the Medicaid recipient was admitted to the medical institution;
 - (B) provided care to the Medicaid recipient that delayed the Medicaid recipient's admission to the medical institution; and
 - (C) has resided in the home on a continuous basis since the date of the individual's admission to the medical institution.
- (2) The Medicaid recipient's sibling who has an ownership interest in the home and who has lived in the home continuously beginning at least twelve (12) months before the Medicaid recipient was admitted to the medical institution.

As added by P.L.178-2002, SEC.81.

IC 12-15-8.5-9

Release of lien; waiver of filing fee

Effective 1-1-2003.

Sec. 9. (a) The office shall release a lien imposed under this chapter within ten (10) business days after the county office of family and children receives notice that the Medicaid recipient:

- (1) is no longer living in the medical institution; and
- (2) is living in the home.

(b) The county recorder shall waive the filing fee for the filing of a release made under this section.

(c) If the property subject to the lien is sold, the office shall release its lien at the closing, and the lien shall attach to the net proceeds of the sale.

As added by P.L.178-2002, SEC.81.

IC 12-15-8.5-10

Exemption from lien

Effective 1-1-2003.

Sec. 10. (a) An exemption from the lien in the amount of one hundred twenty-five thousand dollars (\$125,000) applies to the:

- (1) interest, in the case of a single interest; or
 - (2) combined total interests, in the case of multiple interests;
- of the Medicaid recipient in all property subject to the lien.

(b) This section expires January 1, 2008.

As added by P.L.178-2002, SEC.81.

IC 12-15-8.5-11

Lien subordinate to security interest of financial institution

Effective 1-1-2003.

Sec. 11. (a) As used in this section "financial institution" means a bank, a trust company, a corporate fiduciary, a savings association, a credit union, a savings bank, a bank of discount and deposit, or an industrial loan and investment company organized or reorganized under the laws of this state, another state (as defined in IC 28-2-17-19), or United States law. The term also includes a consumer finance institution licensed to make supervised or regulated loans under IC 24-4.5.

(b) A lien obtained under this chapter is subordinate to the security interest of a financial institution that loans money for any of the following purposes:

- (1) The payment of taxes, insurance, maintenance, and repairs in order to preserve and maintain the property.
- (2) Operating capital for the operation of a farm, a business, or an income producing real property.
- (3) The payment of medical, dental, or optical expenses incurred by the recipient, the recipient's spouse, a dependent parent, or a child who is less than twenty-one (21) years of age or who is disabled under criteria established by the federal Supplemental Security Income program.
- (4) The reasonable costs and expenses for the support, maintenance, comfort, and education of the recipient's spouse, a dependent parent, or a child who is less than twenty-one (21) years of age or who is disabled under criteria established by the

federal Supplemental Security Income program.
As added by P.L.178-2002, SEC.81.